

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Pennsylvania National Mutual Casualty Insurance Company

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Christine C. McGuigan, Esquire
Weber Gallagher, 2000 Market Street, Suite 1300
Philadelphia, PA 19103

DEFENDANTS

N&N Works, Nison Yusupov, Natan Yusupov,
Jeffrey Fegan and Irina FeganCounty of Residence of First Listed Defendant Middlesex
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF	
	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 892 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 899 Administrative Procedure
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
IMMIGRATION				
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		
FEDERAL TAX SUITS				
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
		<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure
				Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C.A. §§2201 et seq. for the purpose of determining a question in actual controversy between the parties					
	Brief description of cause: Plaintiff seeks a declaration from this court that it does not have the duty to defend and indemnify defendants.					

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	CHECK YES only if demanded in complaint:
			JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	11/22/19	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY,	*
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Plaintiff,	CIVIL ACTION NO.:
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	*
vs.	*
	*
	*
N & N WORKS, LLC, NISON YUSUPOV, NATAN YUSUPOV, JEFFREY FEGAN and IRINA FEGAN,	*
	*
	*
	*
Defendants	*
	*

COMPLAINT FOR DECLARATORY JUDGMENT

This is an insurance coverage declaratory judgment action in which Pennsylvania National Mutual Casualty Insurance Company seeks a declaration that it owes neither a duty to defend nor a duty to indemnify N & N Works, LLC, Nison Yusupov, and/or Natan Yusupov under an insurance policy issued to N & N Works, LLC for claims asserted against N & N Works, LLC, Nison Yusupov and Natan Yusupov in a lawsuit filed by Jeffrey Fegan and Irina Fegan in state court in March 2018.

THE PARTIES

1. Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) is a mutual insurance company organized under the laws of the Commonwealth of Pennsylvania and its principal place of business is located in Harrisburg, Pennsylvania.
2. N & N Works, LLC (“N & N”) is a limited liability company organized under the law of the State of New Jersey.
3. Natan Yusupov and Nison Yusupov are the members of N&N Works.
4. Nison Yusupov is a natural person who resides at 28 Bonnie Brook Lane, Edison, New Jersey 08817 and is a citizen of the State of New Jersey.

5. Natan Yusupov is a natural person who resides at 32 Bonnie Brook Lane, Edison, New Jersey 08817 and is a citizen of the State of New Jersey.

6. N & N Works is a citizen of the state of New Jersey.

7. Jeffrey Fegan and Irina Fegan ("the Fegans") are natural persons, husband and wife, who are residents of the State of New Jersey and are citizens of the State of New Jersey. The Fegans are named as defendants in this matter parties who may be interested in the declarations sought by Penn National herein.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332 because the parties are of plaintiff and defendants are citizens of different states and the amount in controversy, exclusive of interest and costs, is in excess of \$75,000.

9. Venue is proper in this district pursuant to 28 U.S.C.A. §1391 because defendants reside and/or maintain their principal places of business within this district.

10. This is an action for a declaratory judgment and other relief brought pursuant to 28 U.S.C.A. §§2201 *et seq.* for the purpose of determining a question in actual controversy between the parties as more particularly set forth herein.

FACTS

11. At all times relevant N&N Works operates and/or operated a home improvement contracting business in New Jersey.

12. In or about 2014 and/or 2015 N&N performed work at a home owned by the Fegans located at 242 South Union Avenue, Cranford, New Jersey 07016 ("the Property").

13. On or about March 11, 2018, the Fegans filed suit against N&N Works, Nison Yusupov, and Natan Yusupov in the Superior Court of New Jersey, Union County, asserting claims arising out of work N&N Works performed for the Fegans at the Property. That lawsuit is captioned *Jeffrey Fegan et. al. v. N&N Works et. al.*, Superior Court of New Jersey, Union County, docket No.:

UNN-L-1011-18 (“the Underlying Action”). A true and correct copy of the complaint filed in the Underlying Action is attached hereto as Exhibit “A”.

14. The Underlying Action alleges that N&N Works and the Yusupovs commenced work at the Property in December 2014.

15. The Underlying Action alleges that while initially N&N’s scope of work was limited to removal and replacement of a first floor kitchen, as time went on N&N convinced the Fegans to do additional work including renovating the entire first floor of the Property, replacing the floor joists underneath the kitchen, replacing the second floor joists above the kitchen, and entirely replacing the Property’s electrical system.

16. The Underlying Action alleges that certain of the work performed by N&N was unnecessary, that certain of the work failed to comply with applicable building code, that all of the work was performed negligently, and that the work needs to be redone.

17. The Underlying Action alleges that N&N and the Yusupovs represented that they were licensed home improvement contractors, that no permits were required for the work they were to perform, that no written contracts were required to do their work, and that they had insurance that would cover any claims arising out of their work. The Underlying Action alleges that these representations were untrue and that they were made with the intent to defraud the Fegans.

18. The Underlying Action asserts claims for Negligence, violation of New Jersey’s Consumer Fraud Act, and Common Law Fraud.

19. The Underlying Action seeks a return of all monies the Fegans paid to N&N for labor and materials.

20. The Underlying Action seeks an award of compensatory damages, punitive damages and an award of statutory treble damages and attorney’s fees pursuant to the New Jersey Consumer Fraud Act, N.J.S.A 56:8-1 et. seq.

21. Penn National issued an insurance policy, policy number AC9 0705296, to the named insured “N AND N WORKS, LLC” (the “Policy”). The policy period was January 1, 2014 to January 1, 2015. A true and correct copy of the Policy is attached hereto as Exhibit “B”.

22. N&N and the Yusupovs tendered defense and indemnity of the Underlying Action to Penn National.

23. Penn National is currently defending N&N and the Yusupovs in the Underlying Action subject to a reservation of the right to, *inter alia*, seek a judicial determination of its duty to defend and/or indemnify the N&N and the Yusupovs.

24. Penn National believes that it has no duty to defend and/or indemnify either the N&N and the Yusupovs against the claims asserted in the Underlying Action as the claims are not covered and/or are excluded from coverage under the terms of the Policy.

25. An actual and present controversy exists between Penn National and N&N and the Yusupovs as to whether Penn National has a duty to defend or indemnify the N&N and the Yusupovs against the claims asserted in the Underlying Action.

COUNT I

26. The allegations of the preceding paragraphs of this complaint are incorporated by reference as if set forth at length herein.

27. The Policy applies, in pertinent part, to those sums the insured becomes legally obligated to pay as damages because of “property damage”, as defined in the Policy, to which the insurance applies.

28. The insurance applies to “property damage” which occurs during the policy period and is caused by an “occurrence”, as defined in the Policy.

29. The Policy excludes coverage for “property damage” that is expected or intended from the standpoint of N&N.

30. The Policy excludes coverage for “property damage” to that particular part of real property on which N&N is working if the “property damage” arises out of N&N’s operations and for “property damage” to that particular part of any property that must be repaired or replaced because N&N’s work was incorrectly performed on it.

31. The Policy excludes coverage for “property damage” to N&N’s work arising out of N&N’s work or any part of it and included in the “products-completed operations hazard” as defined in the Policy.

32. The Policy excludes coverage for “property damage” to “impaired property,” as defined in the Policy, or to property that has not been physically injured arising out of a defect, deficiency, or inadequacy in N&N’s work.

33. The Negligence claims asserted in the Underlying Action do not seek damages for “property damage” caused by an “occurrence” and/or seek damages for “property damage” that is excluded from coverage under the Policy.

34. The statutory consumer fraud and common law fraud claims asserted in the Underlying Action do not seek damages for “property damage” caused by an “occurrence” and/or seek damages that are excluded from coverage under the Policy.

35. The Policy does not cover claims for punitive damages and/or for statutory damages that are punitive in nature such as treble damages awardable under the New Jersey Consumer Fraud Act.

36. Penn National has no duty under the Policy to defend or indemnify the N&N, Nison Yusupov, and/or Natan Yusupov against the claims asserted in the Underlying Action.

WHEREFORE, Pennsylvania National Mutual Casualty Insurance Company respectfully requests that this Court enter an order declaring that:

- 1) Pennsylvania National Mutual Casualty Insurance Company has no obligation under the Policy to defend N&N Works, LLC, Nison Yusupov,

and/or Natan Yusupov against the claims asserted in the action captioned *Jeffrey Fegan et. al. v. N&N Works et. al.*, Superior Court of New Jersey, Union County, docket No.: UNN-L-1011-18;

2) Pennsylvania National Mutual Casualty Insurance Company has no obligation under the Policy to indemnify N&N Works, LLC, Nison Yusupov, and/or Natan Yusupov against the claims asserted in the action captioned *Jeffrey Fegan et. al. v. N&N Works et. al.*, Superior Court of New Jersey, Union County, docket No.: UNN-L-1011-18 and/or indemnify the Company and/or Protonentis against the claims asserted in the Underlying Action; and

3) Granting such other relief as the Court deems appropriate.

WEBER GALLAGHER SIMPSON STAPLETON
FIRES & NEWBY, LLP

By: _____
Christine C. McGuigan, Esquire
Attorneys for Plaintiff
Pennsylvania National Mutual Casualty
Insurance Company

Date: November 25, 2019